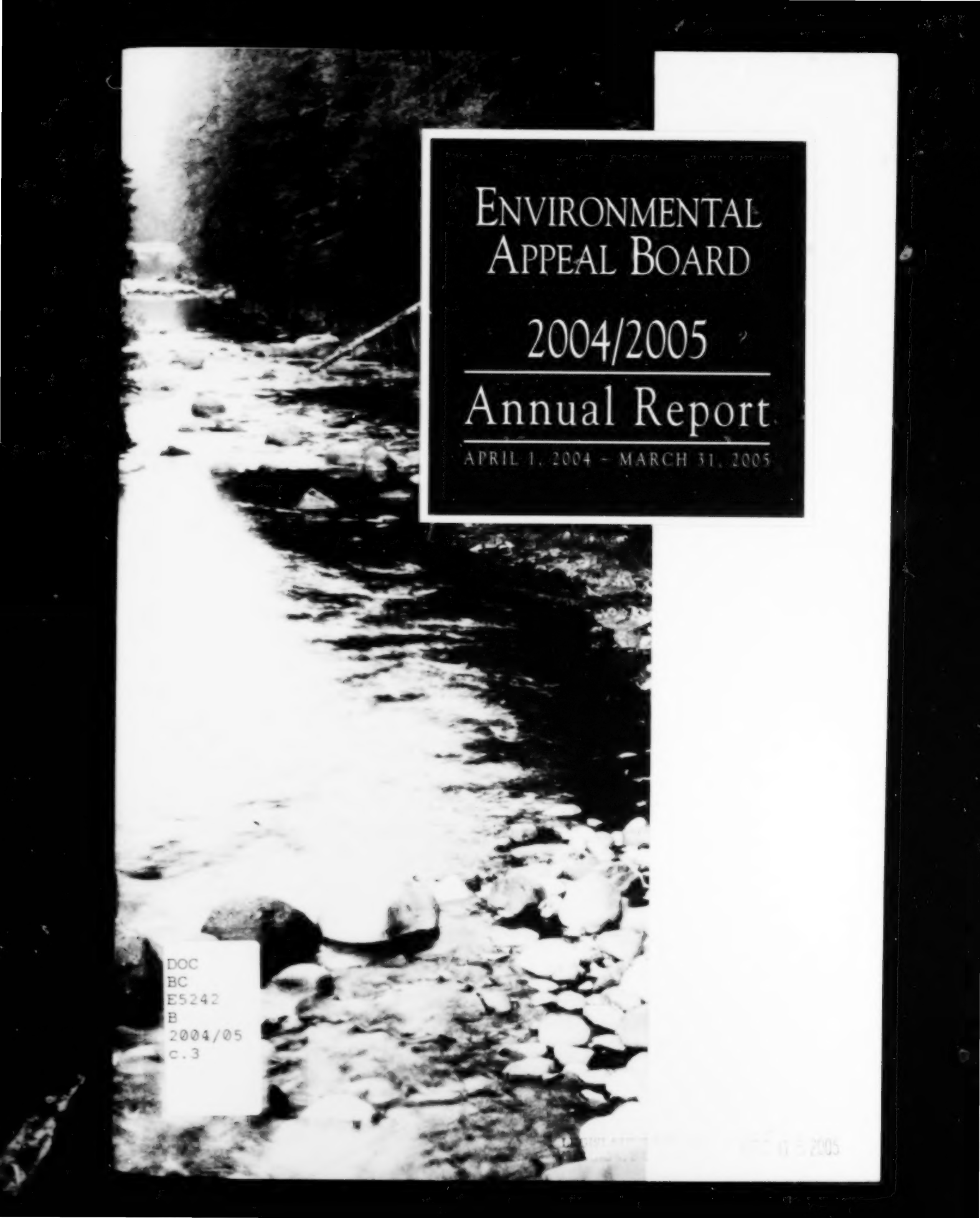

Environmental Appeal Board

2004/2005 Annual Report

APRIL 1, 2004 - MARCH 31, 2005

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Minister of Environment
Minister Responsible for Water Stewardship & Sustainable Communities
Parliament Buildings
Victoria, British Columbia
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Honourable George Abbott
Minister of Health
Parliament Buildings
Victoria, British Columbia
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Dear Ministers:

I respectfully submit herewith the Annual Report of the Environmental Appeal Board for the period April 1, 2004 through March 31, 2005.

Yours truly,

Alan Andison
Chair
Environmental Appeal Board

AR 04/05

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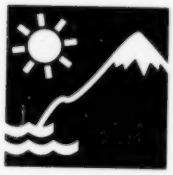


Message from the Chair

I am pleased to submit the fourteenth Annual Report of the Environmental Appeal Board.

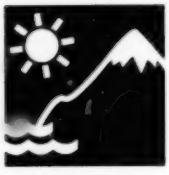
One new member was appointed to the Board during this reporting period and I would like to welcome David Searle, Q.C. to the Board. Mr. Searle was also appointed to the Forest Appeals Commission.

During this report period, some significant changes to the legislation governing appeals to the Board came into force. The *Environmental Management Act* came into force in July of 2004. It replaced the *Waste Management Act* and the *Environment Management Act*, combining the matters that they regulated into a single statute. The *Integrated Pest Management Act* also came into force during 2004, replacing the *Pesticide Control Act*. Finally, the Government also proclaimed a new a *Sewerage System Regulation* in July of 2004. This Regulation replaces the existing *Sewage Disposal Regulation*. Additional information regarding these changes is discussed in more detail later in this report.

Of special note during this report period was the completion of phase 1 of the regulation of ground water in British Columbia. Changes to the *Water Act*, and the enactment of the first six sections of the *Ground Water Protection Regulation*, constitute a significant advancement towards the protection of this important resource. These changes will also result in new decisions that will be subject to appeal before the Board in future years.

In addition to legislative changes, the Board's office also underwent some changes this year. The Board's office, which provides the financial and administrative support for both the Board and the Forest Appeals Commission, was expanded. Two additional tribunals now share the Board's office and administrative staff: the Community Care and Assisted Living Appeal Board and the Hospital Appeal Board. These tribunals have different Chairs and operate independently, while taking advantage of the cost effectiveness of sharing an office and its administrative staff.

Alan Andison



Introduction

The Environmental Appeal Board hears appeals from administrative decisions related to environmental issues. The information contained in this report covers the period of time between April 1, 2004 and March 31, 2005.

The report provides an overview of the structure and function of the Board and how the appeal process operates. It contains statistics on appeals filed, hearings held and decisions issued by the Board within the report period. It also contains the Board's recommendations for legislative changes to the statutes and regulations under which the Board has jurisdiction to hear appeals. Finally, summaries of the decisions issued by the Board during the report period are provided and sections of the relevant statutes and regulations are reproduced.

Decisions of the Environmental Appeal Board are available for viewing at the Board office, on the Internet, and at the following libraries:

- Ministry of Environment Library
- University of British Columbia Law Library
- University of Victoria Law Library
- British Columbia Court House Library Society
- West Coast Environmental Law Library

Decisions are also available through the Quicklaw Data Base.

Information about the Environmental Appeal Board is available from the Board office and on the Board's website. Detailed information on the Board's policies and procedures can be found in the Environmental Appeal Board Procedure Manual. Pamphlets explaining the appeal procedure under each of the relevant statutes are also available. Please feel free to contact the office if you have any questions, or would like additional copies of this report. The Board can be reached at:

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The Board

The Environmental Appeal Board is an independent agency established under the *Environment Management Act* and continued under the *Environmental Management Act*. It hears appeals from administrative decisions made under a number of statutes. The statutes in force during the report period were the *Pesticide Control Act*, replaced by the *Integrated Pest Management Act*, the *Waste Management Act*, replaced by the *Environmental Management Act*, the *Wildlife Act* and the *Water Act*. The Minister responsible for all of these statutes, except for the *Water Act*, was the Minister of Water, Land and Air Protection. The *Water Act* was administered by the Minister of Sustainable Resource Management. The Board also hears appeals from certain decision made under the *Health Act*, which was administered by the Minister of Health Services. [1]

Board Membership

The Board members are appointed by the Lieutenant Governor in Council (Cabinet) under section 93(3) of the *Environmental Management Act* (formerly section 11(3) of the *Environment Management Act*). The members are drawn from across the Province, representing diverse business and technical experience. Board membership consists of a full-time chair, one or more part-time vice-chairs, and a number of part-time members.

The Board	From
Chair	
Alan Andison	Victoria
Vice-chair	
Cindy Derkaz	Salmon Arm
Members	
Sean Brophy	North Vancouver
Robert Cameron	North Vancouver
Richard Cannings	Naramata
Don Cummings	Penticton
Bruce Devitt	Victoria
Margaret Eriksson	New Westminster
Robert F. Gerath	North Vancouver
R.A. (Al) Gorley	Victoria
James Hackett	Nanaimo
Lynne Huestis	North Vancouver
Katherine Lewis	Prince George
Paul Love	Campbell River
David Ormerod	Victoria
Gary Robinson	Victoria
David Searle (from November 1, 2004)	Vancouver
Lorraine Shore	Vancouver
David J. Thomas	Victoria
Robert Wickett	Vancouver
Stephen V.H. Willett	Kamloops
Phillip Wong	Vancouver
J.A. (Alex) Wood	North Vancouver

[1] Effective June 16, 2005, the provincial government reorganized the ministries. The Ministry of Water, Land and Air Protection and the Ministry of Sustainable Resource Management became part of the new Ministry of Environment. The Ministry of Health Services became part of the new Ministry of Health.

The Board Office

The Board office provides registry services, legal advice, research support, systems support, financial and administrative services, training and communications support for the Board.

The Board shares its staff and its office space with the Forest Appeals Commission. The Forest Appeals Commission hears appeals from forestry-related administrative decisions made under the *Forest Practices Code of British Columbia Act*, the *Forest Act*, the *Forest and Range Practices Act*, the *Private Managed Forest Land Act*, the *Range Act*, and the *Wildfire Act*, in much the same way that the Board hears environmental appeals. As of December 2004, the Board also shares its staff and its office space with two additional tribunals: the Community Care and Assisted Living Appeal Board and the Hospital Appeal Board.

Each of these tribunals operates completely independently of one another. Supporting four tribunals through one administrative office gives each tribunal greater access to resources while, at the same time, cutting down on administration and operation costs. In this way, expertise can be shared and work can be done more efficiently.

Policy on Freedom of Information and Protection of Privacy

The appeal process is public in nature. Hearings are open to the public, and information provided to the Board by one party must also be provided to all other parties to the appeal.

The Board is subject to the *Freedom of Information and Protection of Privacy Act* and the regulations under that Act. If a member of the public requests information regarding an appeal, that information may be disclosed, unless the information falls under one of the exceptions in the *Freedom of Information and Protection of Privacy Act*.

Parties to appeals should be aware that information supplied to the Board is subject to public scrutiny and review.

Legislative Amendments Affecting the Board

In this report period, there were a number of legislative changes that affected or will affect the Board.

The Government proclaimed a new a *Sewerage System Regulation* in July of 2004. This *Regulation* replaces the existing *Sewage Disposal Regulation* and provides that the Board will only hear appeals from permits issued for holding tanks. The new Regulation came into effect on May 31, 2005.

Effective July 8, 2004, the *Environment Management Act*, which established the Board, its structure and basic powers and procedures, was repealed. At that same time, a new enactment, the *Environmental Management Act*, S.B.C. 2003, c. 53, came into force. Part 8 of the new Act states that the Board is continued, and incorporates the Board's structure, powers and procedures that had previously been set out under the *Environment Management Act*.

The new *Environmental Management Act* also contains much of what was formerly contained in the *Waste Management Act*, which was also repealed effective July 8, 2004. While most of the decisions that could be appealed under the *Waste Management Act* can still be appealed to the Board under the *Environmental Management Act*, the new Act also allows for appeals of administrative monetary penalties, an enforcement tool for government officials that was not available under the *Waste Management Act*.

Effective December 31, 2004, the *Integrated Pest Management Act*, S.B.C. 2003, c. 58, replaced the *Pesticide Control Act*. Part 4 of the *Integrated Pest Management Act* creates a right of appeal to the Board for persons who are subject to decisions under that Act. Of particular note, the new Act includes two types of appealable decisions: appeals from orders to use qualified monitors and appeals from administrative monetary penalties.

There were also some amendments to the *Water Act*, adding provisions to support the *Ground Water Protection Regulation*, B.C. Reg. 299/2004. Sections 1 to 6 of that Regulation also came into force on November 1, 2004. The remainder of the Regulation will come into force in November of 2005. The pre-existing appeal provisions in the *Water Act* were expanded to include matters relating to ground water.

Finally, effective July 8, 2004, the provisions of the *Administrative Tribunals Appointment and Administration Act* began to apply to the Board.

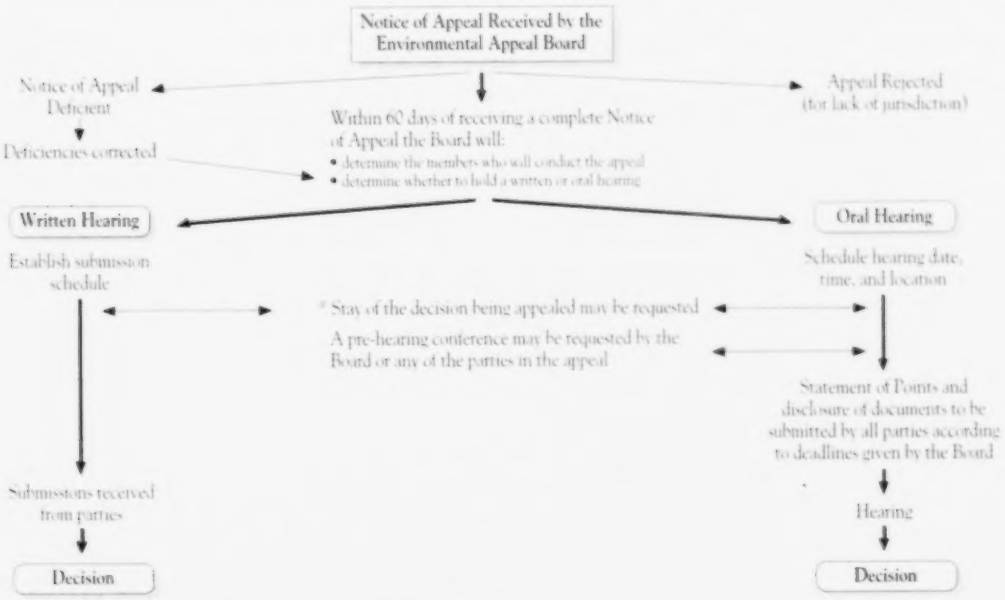
The Appeal Process

Section 11 of the *Environment Management Act* (up to June 8, 2004) and Part 8 of the *Environmental Management Act* (since July 8, 2004) set out the basic powers and procedures of the Board. Additional detail is provided in the *Environmental Appeal Board Procedure Regulation*.

The Board's authority over a specific appeal is further defined in the individual statutes and regulations which provide the right of appeal to the Board. The individual statutes set out the types of decisions that are appealable to the Board, the time for appealing the decisions, as well as the Board's decision-making powers on the appeal.

In order to ensure that the appeal process is open and understandable to the public, the Board has developed the Environmental Appeal Board Procedure Manual. The manual contains information about the Board itself, the legislated procedures that the Board is required to follow, and the policies the Board has adopted to fill in the procedural gaps left by the legislation.

The following is a brief summary of the appeal process. For more detailed information, a copy of the Board's Procedure Manual can be obtained from the Environmental Appeal Board office, or from the Board's website.


Notice of Appeal Received by the Environmental Appeal Board
Notice of Appeal Deficient
Deficiencies corrected
Appeal Rejected (for lack of jurisdiction)
Within 60 days of receiving a complete Notice of Appeal the Board will:
• determine the members who will conduct the appeal
• determine whether to hold a written or oral hearing
Written Hearing
Oral Hearing
Establish submission schedule
Schedule hearing date, time, and location
* Stay of the decision being appealed may be requested
A pre-hearing conference may be requested by the Board or any of the parties in the appeal
Statement of Points and disclosure of documents to be submitted by all parties according to deadlines given by the Board
Submissions received from parties
Hearing
Decision
Decision

* The Board's authority to issue a stay varies from one statute to the next

Recommendations

Due to the recent and significant changes to the legislation under which the Board derives its authority, the Board is not in a position to report on the impacts of those changes at this time. Accordingly, the Board will monitor the impacts during the next reporting period and provide any recommendations it may have in the 2005-2006 Annual Report.

Statistics

The following tables provide information on the appeals filed with the Board, and decisions published by the Board, during the report period. The Board publishes all of its decisions on the merits of an appeal, and most of the important preliminary and post-hearing decisions. The Board also issues numerous unpublished decisions on a variety of preliminary matters that are not included in the statistics below.

Between April 1, 2004 and March 31, 2005, a total of 81 appeals were filed with the Board against 79 administrative decisions, and a total of 93 decisions were published.

April 1, 2004 – March 31, 2005

Total appeals filed		81
Number of administrative decisions appealed		79
Appeals abandoned, withdrawn, rejected, jurisdiction/standing		56
Hearings held on the merits of appeals		
Oral hearings completed	28	
Written hearings completed	12	
*Total hearings held on the merits of appeals		40
Total oral hearing days		66.5
Published Decisions issued		
Final Decisions		
Appeals allowed	5	
Appeals allowed in part	4	
Appeals dismissed	39	
Total Final Decisions		48
Decisions on preliminary matters		36
Reconsideration		1
Consent Orders		6
Decisions on Costs		
Costs denied	2	
Total Costs Decisions		2
Total published decisions issued		93

*Note: Most preliminary applications and post-hearing applications are conducted in writing. However, only the final hearings on the merits of the appeal have been included in this statistic.

▲

This table provides an overview of the total appeals filed, hearings held, and published decisions issued by the Board during the report period. It should be noted that the number of decisions issued and hearings held during the report period does not necessarily reflect the number of appeals filed for the same period, because the appeals filed in previous years may have been heard or decided during the report period.

It should also be noted that two or more appeals may be heard together.

Appeal Statistics by Act

	Environmental Management Act	Health Act	Integrated Pest Management Act	Pesticide Control Act	Waste Management Act	Water Act	Wildlife Act
Appeals filed during report period	9	18		2	4	21	27
Number of administrative decisions appealed	8	17		2	4	21	27
Appeals abandoned, withdrawn, rejected jurisdiction/standing	3	16		2	16	6	13
Hearings held on the merits of appeals							
Oral hearings		3			1	5	19
Written hearings				3	1	1	7
Total hearings held on the merits of appeals		3		3	2	6	26
Total oral hearing days	4				1	12	49.5
Published decisions issued							
Final decisions		6		7	5	8	22
Cost Award					1	1	
Preliminary applications		3			3	5	25
Reconsideration				1			
Consent					1		5
Total published decisions issued		9		8	10	14	52

▲

This table provides a summary of the appeals filed, hearings held and published decisions issued by the Board during the report period, categorised according to the statute under which the appeal was brought.

Summaries of Environmental Appeal Board Decisions

April 1, 2004 ~ March 31, 2005

The Board issues hundreds of decisions each year, some that are published and others that are not published. A selection of published decisions have been summarized below. These decisions were issued by the Board between April 1, 2004 and March 31, 2005. They are organized according to the statute under which the appeal was filed.

Environmental Management Act

2004-EMA-002(a) Squamish Terminals Ltd. v. Director of Waste Management (District of Squamish, Third Party)
Decision Date: March 22, 2005
Panel: Alan Andison

A preliminary issue was raised as to whether the Appellant, Squamish Terminals Ltd. ("Squamish Terminals") had standing to appeal a Deputy Director's decision to issue an approval in principle ("AIP") to the District of Squamish. The AIP authorized the District to implement a remediation plan on certain contaminated properties adjacent to lands owned by Squamish Terminals. To have standing, it had to be a "person aggrieved" by the issuance of the AIP.

The Board found that Squamish Terminals would not suffer any harm and, therefore, could not be properly characterized as a "person aggrieved" by the decision to issue the AIP; accordingly, it had no standing to bring the appeal.

The appeal was dismissed for lack of jurisdiction.

2004-EMA-003(a) British Columbia Power and Hydro Authority v. Deputy Director (Imperial Oil Limited, BC Rail Ltd., City of Quesnel and Shell Canada Products Limited, Third Parties)
Decision Date: January 12, 2005
Panel: Alan Andison

The British Columbia Power and Hydro Authority ("BC Hydro") applied for a stay of a decision by the Assistant Director of Waste Management to approve an amended remediation plan. The amended remediation plan pertained to a remediation order that named BC Hydro, along with the Third Parties, as persons responsible for remediating a contaminated site. BC Hydro submitted that the Assistant Director's decision to approve the remediation plan, as it pertained to BC Hydro, was outside of his jurisdiction given the BC Court of Appeal's decision in *British Columbia Hydro and Power Authority v. British Columbia (Environmental Appeal Board)* 2003 BCCA 436 (hereinafter BC Hydro), where it held that BC Hydro was not liable for contamination arising from the activities of its predecessor corporations.

The Board found that the *BC Hydro* case did not provide sufficient grounds to conclude that the Assistant Director's decision was beyond his jurisdiction, nor did it provide a basis for issuing a stay.

The application for a stay was denied.

Health Act

2003-HEA-014 Janet Hardin v. Environmental Health Officer

Decision Date: April 13, 2004

Panel: Don Cummings

Janet Hardin appealed the decision of the Environmental Health Officer ("EHO") to refuse a permit for a sewage disposal system on a parcel of land in Tulameen, BC. The issue in the appeal was whether the proposed sewage disposal system would treat the effluent sufficiently to protect the public health.

The Board agreed with the EHO that the system, as designed, should not be permitted for the property.

The appeal was dismissed.

2003-HEA-018(a) Sheila Condratow v. Environmental Health Officer (Fred Formosa, Third Party)

Decision Date: May 17, 2004

Panel: Alan Andison

Sheila Condratow appealed the decision of the EHO to issue a permit for a sewage disposal system on a neighbouring parcel of land on Savary Island. The Appellant sought an order canceling the permit.

The issues in this appeal were whether the proposed sewage disposal system would meet setback requirements from a source of water and a high water mark, whether erosion of the bank would result in contamination of tidal waters, whether the Property Owner failed to post notice of the permit, and whether the system would protect the public health. The Appellant also argued, based on the BC Supreme Court decision in *Mark de Goutiere and Cynara de Goutiere v. Environmental Appeal Board and Albaco Industries*, [1995] B.C.J. No. 2513, that the EHO had failed to take account of a neighbour's intention to relocate a water well when issuing the permit.

The Board found that the only water well within the 100-foot setback distance from the system was one that a neighbouring property owner had installed after the issuance of the permit and in contravention of section 42 of the *Sanitary Regulation*. The Board also found that regulatory requirements for a high water mark setback do not apply to tidal water. The Board accepted the evidence of the EHO and an engineer that, given the high level of treatment in the innovative system, the 60-foot distance to the ocean would be more than adequate to protect against contamination. The Board found that public notice of the permit was posted as required by the *Sewage Disposal Regulation* and that, based on all the evidence, the sewage disposal system would protect public health. The Board found that, in this case, the EHO had only preliminary information that a neighbour might re-locate a well and had no information that the new location could affect the permit.

The appeal was dismissed.

2003-HEA-019(a) Anar Alidina v. Environmental Health Officer

Decision Date: December 1, 2004

Panel: Alan Andison

Anar Alidina appealed the decision of the EHO to reject a request to reclassify her sewage disposal system. The reclassification was required in order to increase the number of beds in her private

health care facility from 7 to 10. In making his decision, the EHO had determined that the facility was equivalent to a "nursing home" for the purposes of determining the minimum flow capacity requirements of the sewage system.

The Board found that the facility was not equivalent to a "nursing home." It also found that allowing for a 50 percent safety margin, the sewage system had the technical capacity to safely accept the effluent from a 10-bed facility, provided that the Appellant complied with certain conditions.

The appeal was allowed.

2004-HEA-002(a) and 2004-HEA-003(a) Lydia Mattner, Dave and Louise Wiwchar and Fred and Darla Mark v. Environmental Health Officer (Anthony Melvin, Third Party)

Decision Date: June 2, 2004

Panel: Alan Andison

The Appellants appealed the decision of the EHO to issue a sewage disposal system permit to serve a home on a neighbouring lot in Bowser, BC. The system was an innovative system that included a septic tank, package treatment plant, a Vegetative Tertiary Filter, and a holding tank.

The Board concluded that the sewage disposal system would protect the public health. The Board upheld the permit, subject to certain amendments.

The appeals were dismissed.

2004-HEA-007(a) H & F Ventures Ltd. v. Environmental Health Officer

Decision Date: August 5, 2004

Panel: Alan Andison

H & F Ventures appealed the decision of the EHO to refuse to issue a sewage disposal system permit for a property in Nanoose Bay, BC.

After the Board convened an appeal hearing, the EHO advised the Board that he had granted the permit that was the subject of the appeal, and that the Appellant had intended to withdraw the appeal, but had failed to notify the Board of the withdrawal.

The appeal was dismissed.

Integrated Pest Management Act

No decisions were issued during the report period.

Pesticide Control Act

2001-PES-003(b) Josette Wier v. Deputy Administrator, Pesticide Control Act (Minister of Forests, Morice Forest District, Permit Holder)

Decision Date: November 8, 2004

Panel: Alan Andison

Following a judicial review of the Board's 2002 decision on Josette Wier's appeal of a pesticide use permit, issued by the Deputy Administrator for the application of monosodium methane arsenate ("MSMA"), the B.C. Supreme Court sent the matter back to the Board with directions (see *Wier v. Environmental Appeal Board et. al*, 2003 BCSC 1441). The Board issued this decision in accordance with the Court's direction.

The Board considered the evidence presented during the 2002 hearing in relation to the risks and benefits of using MSMA and alternative methods to control mountain pine and spruce bark beetles in the affected areas. The Board found that the risks associated with MSMA use under the terms of the permit were mitigated to a reasonable level when the permit was amended as originally directed by the Board. The Board found that costs

and risks associated with alternative treatment methods made those alternatives unreasonable. Accordingly, the Board confirmed the decision of the Deputy Administrator to issue the permit, subject to the changes ordered by the Board.

The appeal was dismissed.

2003-PES-003(a) Nadine Dechiron on behalf of the Granby Wilderness Society and the Boundary Naturalists v. Deputy Administrator, Pesticide Control Act (Ministry of Forests, Third Party)
Decision Date: June 1, 2004
Panel: Alan Andison

Nadine Dechiron, on behalf of the Granby Wilderness Society and the Boundary Naturalists, appealed the Deputy Administrator's issuance of an approval of a pest management plan. The approval was issued to the Minister of Forests (the "MOF"). Together, the plan and the approval authorize the use of pesticides to control vegetation in cutblocks on Crown land in the Boundary Timber Supply Area for a five-year term.

The Appellant sought an order reversing the approval, or, in the alternative, an order adding conditions to protect grizzly forage foods.

The Board reviewed the relevant legislation and case law to determine whether the test that is applied by the Board when determining whether a pesticide use will have an unreasonable adverse effect, is appropriate for evaluating pest management plans. It found that the test was appropriate for evaluating pest management plans. The Board also found that the plan in this case met all statutory requirements for plan content and that the Deputy Administrator did not improperly delegate his authority to the MOF when he approved the plan.

With regard to the question of whether the use of pesticides in accordance with the plan and the approval would cause an unreasonable adverse effect, the Board found that the Appellant provided insufficient evidence to establish that the pesticide use will have an adverse effect on grizzlies as a result of ingesting or directly contacting pesticides. However, the Board found that the pesticide use might have an adverse effect through the loss of grizzly bears' food plants and that the approval does pose some risk to the bears, particularly breeding females. The Board found that the plan did not reduce the risk of loss of food plants to a reasonable level.

The Board ordered the Deputy Administrator to amend the approval to include certain conditions to address the risk to grizzly bears. The Board was satisfied that, if the approval was so amended, the use of pesticides under the plan and the approval would not have an unreasonable adverse effect to humans or the environment. The Board upheld the remainder of the approval.

The appeal was allowed, in part.

2003-PES-012(a); 2003-PES-013(a) Robert Stacey on behalf of the Cowichan Beekeepers and Stan Reist on behalf of the Nanaimo Beekeepers Association v. Administrator, Pesticide Control Act (British Columbia Minister of Health Services, Third Party)
Decision Date: April 8, 2004
Panel: Alan Andison

Robert Stacey, on behalf of the Cowichan Beekeepers, and Stan Reist, on behalf of the Nanaimo Beekeepers Association, appealed the decision of the Administrator to issue a pesticide use permit. The permit authorized the application of pesticides for the purpose of controlling mosquitos in areas of BC where there was a risk to human health from the West Nile virus. The Appellants asked the Board to remove the pesticides targeting adult mosquitoes (adulticides) from the permit, or,

in the alternative, to add various conditions to address their concerns regarding the honeybee populations.

The Board found that the Appellants had established that the application of adulticides authorized in the permit may have an "adverse effect" on honeybee populations which would result in damage to the environment. The Board determined, however, that the potential adverse effect was not unreasonable. Specifically, the Board found that the adverse effect to honeybees did not outweigh the intended benefit to the human population in BC, and the permit set out a measured response based on the level of risk to the population. Nonetheless, the Board ordered that the permit be amended to limit the application of adulticides to the hours between dusk and dawn. The Board determined that the amendment would remove the unnecessary risk of an adverse effect to honeybees, because mosquitos are most active at night and honeybees are most active during the day.

The appeals were allowed, in part.

2004-PES-001(a) Jim Fairall v. Deputy Administrator, Pesticide Control Act
Decision Date: July 14, 2004
Panel: Lynne Huestis

Jim Fairall appealed the Deputy Administrator's decision to revoke Mr. Fairall's pesticide applicator certificate and restrict his right to apply for a new certificate.

The Deputy Administrator revoked the certificate based on his finding that Mr. Fairall had: 1) held himself out as someone with a pest control service licence and liability insurance when he had neither; 2) offered services which required him to have a licence; and, 3) ignored warnings from the Deputy Administrator that he needed both a licence and liability insurance.

The Board found that Mr. Fairall's advertising gave the impression that he was licensed by the provincial government. The Board further found that he had offered to apply pesticides on a fee for service basis. The Board found that the revocation was an appropriate enforcement action.

The appeal was dismissed.

2004-PES-002(a), 2004-PES-004(a), 2004-PES-005(a) Ecological Health Alliance, Gordon Watson and Nonna Weaver v. Deputy Administrator, Pesticide Control Act (Ministry of Forests, Third Party)
Decision Date: April 14, 2004
Panel: Alan Andison

The Appellants appealed the issuance of a pesticide use permit by the Deputy Administrator. The permit authorized the use of Foray 48B, with the active ingredient Bacillus thuringiensis Berliner ssp Kurstaki ("BTK"), in a spray program designed to eradicate localized populations of the North American gypsy moth in Saanich and Delta, BC. The Appellants sought an order canceling the permit, or, in the alternative, an order varying the permit so that it would not allow aerial pesticide applications or other pesticide applications on people and their homes.

The Board found that the use of Foray 48B, as authorized by the permit, would have an adverse effect on the environment as it would kill non-target moths and butterflies, and may pose a risk of an adverse effect on the health of some people residing within the spray zones. However, the Board found that the adverse effects of the proposed spray program were not unreasonable in the circumstances of the permit. The Board found that the adverse effects did not outweigh the potential economic harm to the provincial economy if a gypsy moth population became established and

resulted in the imposition of trade sanctions on products exported from BC.

The appeals were dismissed.

Waste Management Act

2002-WAS-025(a), 2003-WAS-004(a) Houweling Nurseries Limited v. District Director of the Greater Vancouver Regional District (Roger Emsley, Third Party) (Corporation of Delta, Participant)

Decision Date: April 26, 2004

Panel: Alan Andison, Dr. Robert Cameron, Phillip Wong

Houwelling Nurseries Limited ("HNL") appealed two separate decisions by the District Director of Air Quality: a pollution prevention order issued to HNL, and the refusal of HNL's application to amend its air quality permit which authorized the discharge of air emissions from HNL's greenhouse operation located in Delta, BC. HNL sought to have the Board reverse the order. HNL also submitted that the Board had jurisdiction over the appeal of the refusal to amend the permit.

The issues in this appeal were whether the Board had jurisdiction under sections 43 and 44 of the *Waste Management Act* (the "Act") to hear an appeal of a refusal to amend a permit, and whether the Board should reverse the order.

The Board determined that the District Director's refusal to amend the permit was not an appealable decision within the meaning of sections 43 and 44 of the Act. Accordingly, the Board did not have jurisdiction over that appeal, and it was not prepared to make any findings on the merits of the refusal to amend the permit.

The Board determined that the decision to issue the order should be reversed. The Board found that there was insufficient evidence demonstrating that HNL was out of compliance with the *Agricultural Waste Control Regulation* or the permit. In addition, the Board found that there was insufficient evidence, on the date the order was issued, to demonstrate that the District Director had reasonable grounds to conclude that HNL's operations were likely to cause pollution of the environment.

The appeal of the refusal to amend the permit was denied for lack of jurisdiction. The appeal of the order was allowed.

2003-WAS-021(b), 2003-WAS-022(a), 2003-WAS-023(a) Myrus James on behalf of the Penelakut First Nation Elders, Donna Martin on behalf of the Salt Spring Island Residents for Responsible Land Use, and Canadian Sablefish Association v. Regional Waste Manager (Sablefin Hatcheries Ltd., Third Party)

Decision Date: November 17, 2004

Panel: Alan Andison, Dr. Robert Cameron, Robert F. Gerath

Myrus James, on behalf of the Penelakut First Nation Elders (the "Elders"), Donna Martin, on behalf of the Salt Spring Island Residents for Responsible Land Use (the "Residents"), and Eric Wickham, on behalf of the Canadian Sablefish Association (the "CSA"), filed separate appeals of the Regional Waste Manager's decision to issue an approval to Sablefin Hatcheries Ltd. ("Sablefin") to discharge effluent to the land, from a land-based fish hatchery at Walker Hook on Salt Spring Island.

Walker Hook (known to the Elders as Syuhe'mun) is a designated archeological site containing a large shell midden. During construction of the injection wells that would receive the effluent, the remains of several First Nations individuals were discovered. The Elders claimed a number of Aboriginal rights related to the site, and appealed

on the basis that they were not adequately consulted prior to the issuance of the approval and that the approval unjustifiably infringed their Aboriginal rights. The Residents appealed on the grounds that there was inadequate consultation with local residents and that the effluent discharge will cause an adverse effect on the sensitive environment of Walker Hook. The CSA appealed on the basis that the discharge of effluent may pollute fish habitat and threaten wild sablefish stocks.

The Board found that the information relied on by the Regional Manager adequately assessed the potential risks associated with the discharge, with the possible exception of the risks associated with marine microbes that may be present in the discharge. In addition, the Board found that the Regional Manager appropriately considered other public concerns, such as site sensitivity, and that the Regional Manager had no jurisdiction to consider the potential of the site for alternate zoning as argued by the Residents. However, the Board decided to further consider the risks associated with marine microbes that may be present in the effluent, based on information that was provided to the Board but was not available to the Regional Manager. In so doing, the Board found that marine microbes in the effluent would be diluted to a concentration that poses no threat to humans or the marine environment, including wild sablefish.

Regarding consultation with the First Nations, the Board considered legal authorities on the duty to consult and found that the Regional Manager conducted adequate and meaningful consultations with the affected First Nations before he issued the approval.

The Board also considered whether the discharge of effluent in accordance with the approval would unjustifiably infringe the Aboriginal rights asserted by the Elders. The Board found that the discharge would not cause a *prima facie* infringement of any Aboriginal right to collect shellfish, fish or other foods from the areas around Syuhe'mun. In addition, the Board found that the Elders did not provide sufficient evidence to prove their claim of Aboriginal rights to Syuhe'mun as a sacred burial ground, and, even if those rights had been proven, the effluent discharge would not cause a *prima facie* infringement of those rights.

Sablefin applied for an order of costs against the Elders. The Board found that costs were not warranteed in the circumstances.

The appeals were dismissed.

Sablefin's application for costs was denied.

2003-WAS-025(a) Ermes Culos v. Assistant Regional Waste Manager (Wastech Services Limited., Third Party)

Decision Date: August 23, 2004

Panel: Dr. Robert Cameron

Ermes Culos appealed a decision of the Assistant Regional Waste Manager to amend sections of an operational certificate held by Wastech Services Ltd. and the Village of Cache Creek. The certificate authorizes Wastech Services Ltd. and the Village of Cache Creek to manage solid waste at a landfill. The amendment included authorization for construction of a berm that would increase the overall capacity of the landfill.

The Appellant argued that the amendment was made in contravention of a requirement in the regional district's solid waste management plan ("SWMP") that there be public consultation prior to a "significant increase" in the rate of deposition of waste from outside the district. He also argued that increased waste volumes would result in changes to groundwater quality outside of the landfill boundaries and that the existing network of observation and monitoring wells was not sufficient.

The Board found that, while the additional landfill capacity might result in the landfill containing a greater amount of waste imported from outside the district, the public consultation requirements in the SWMP are only triggered if there is a proposal to increase the rate of such deposition. In this case, the certificate amendment does not change the rate of deposition. The Board found that there was no evidence that additional waste volumes authorized by the amendment would result in groundwater quality being impaired, but the Board also found that the proposed expansion might result in some increase in the volume of leachate produced. Therefore, the Board considered the possibility of an undetected leachate pathway to the river. The Board found that the evidence indicated that it is highly improbable that a break in bedrock or another geological formation was creating a leachate pathway to the river. The Board further found that the existing monitoring wells were located such that they will provide the necessary warning of potential declines in groundwater quality.

The appeal was dismissed.

2004-WAS-004(a) Ajah Azreal v. Regional Waste Manager (Nexterra Energy Corp., Third Party)

Decision Date: June 14, 2004

Panel: Alan Andison

Ajah Azreal appealed an approval issued by the Regional Manager to Nexterra Energy Corp. The approval authorizes Nexterra to discharge emissions from a research and development gasification plant in Kamloops.

The Regional Manager and Nexterra filed separate applications to have the Appellant's appeal dismissed on the basis that he did not have standing to appeal as a "person aggrieved." Both parties submitted that the Appellant lived more than 20 kilometres away from the gasification plant site and, therefore, he would not be personally affected by the approval.

While the Board found that the Appellant was not required to provide definitive proof that he will be harmed by the approval, the Board found that he did not disclose enough evidence for the Board to reasonably conclude that his personal interests are being prejudicially affected. The Board found that all but one of his grounds of appeal related to the potential effects of the approval on people other than himself. The Board found that the Appellant did not provide sufficient evidence to support his claim that the emissions would affect him at his home or when he travelled through Kamloops.

The Board found that the Appellant did not have standing to appeal the approval as he was not a "person aggrieved."

The appeal was dismissed for lack of jurisdiction.

2004-WAS-007(a) 427958 B.C. Ltd. (dba the Super Save Group of Companies) v. Deputy Director of Waste Management (BC Hydro and Power Authority, Applicant, Ocean Construction Supplies Ltd., Third Party)

Decision Date: November 2, 2004

Panel: Alan Andison

This was a decision on two preliminary questions of jurisdiction.

427958 B.C. Ltd. ("Super Save") appealed the decision of the Deputy Director to issue an approval in principle ("AIP") to the BC Hydro and Power Authority ("BC Hydro"). The AIP pertained to a proposal to remediate certain contaminated lands held by BC Hydro and adjacent lands held by the Federal government. BC Hydro challenged Super Save's standing to bring the appeal on the grounds that it was not a "person aggrieved" by the AIP, and that the AIP did not constitute a

"decision" under section 43 of the *Waste Management Act*.

The Board found that, in issuing the AIP, the Deputy Director did not make a decision that prejudicially affects Super Save's interests. The Board found that Super Save was not aggrieved by anything in the AIP, nor did it provide evidence that it would be prejudicially affected by the proposed remediation work.

The Board found that Super Save was not a "person aggrieved" by the decision to issue the AIP and, therefore, had no standing to bring the appeal.

The appeal was dismissed for lack of jurisdiction.

Water Act

2002-WAT-028(b) V.C. Richard Baravelle v. Regional Water Manager (Anne Evelyn Posgate and David Lancaster, Third Parties)
Decision Date: June 8, 2004
Panel: Cindy Derkaz, Paul Love, David Thomas

Mr. Baravelle appealed the Regional Water Manager's decision to issue a conditional water licence to the neighbouring Third Parties, authorizing the diversion of 500 gallons per day for domestic purposes from Alymer Creek near Nelson, BC. The Appellant argued that there was insufficient flow in the creek to support a new licence, and that the Regional Manager should have considered an alternate source of water from another nearby creek. The Appellant also argued that the Regional Manager's decision was based on outdated and insufficient flow information. The Appellant asked the Board to rescind the licence.

The Board found that, even though some of the most complete flow records for the creek were between 80 and 50 years old, in combination with a number of spot flow measurements taken in the past decade, there was an adequate basis for the Regional Manager's decision. The Board found that the Appellant failed to prove that there is insufficient flow in the creek to support the issuance of the licence. The Board also found that, given his assessment that there are adequate flows to support a licence on Alymer Creek, the Regional Manager had no obligation to consider an alternate source of water for the licence.

The appeal was dismissed.

2003-WAT-009(b) John Zahradnik v. Assistant Regional Water Manager (Cooks' Ferry Indian Band and Michael Rice, Third Parties) (Markku and Julie Toijanen, Participants)
Decision Date: May 5, 2004
Panel: Cindy Derkaz

The Cook's Ferry Indian Band (the "Band") was a third party in the appeal of John Zahradnik against the decision of the Regional Manager to deny Mr. Zahradnik an irrigation licence. The Board upheld the Regional Manager's decision and dismissed the appeal (see: *Zahradnik v. Assistant Regional Manager* (Appeal No. 2003-WAT-009(a), February 27, 2004). The Band applied to the Board for costs against Mr. Zahradnik.

The Band submitted that the Board should exercise its discretion to award the Band all or a portion of its costs on the basis that a significant amount of Mr. Zahradnik's appeal was frivolous or vexatious, and that Mr. Zahradnik unnecessarily delayed the proceedings. The Band further asserted that one of Mr. Zahradnik's submissions was a vexatious tactic that caused stress to the Band's members.

The Board found that Mr. Zahradnik's appeal raised a serious justiciable issue, had a reasonable prospect of success and was not brought

maliciously or with the intent to harass or annoy. The Board was concerned about allegations Mr. Zahradnik made about the Band and about public officials and the discharge of their duties under the *Water Act*. The Board noted that Mr. Zahradnik did not substantively pursue these allegations and found that, on the whole, Mr. Zahradnik's conduct did not warrant an award of costs against him.

The application for costs was denied.

2003-WAT-010(a); 2003-WAT-011(a); 2003-WAT-012(a) & 2003-WAT-013(a) John Moon v. Assistant Regional Water Manager (Department of National Defence, Third Party)

Decision Date: June 15, 2004

Panel: Paul Love

John Moon appealed four decisions of the Regional Manager refusing applications for water licences to divert and store water for irrigation. The Appellant was not satisfied that water licencing personnel had handled his applications "in an independent and objective manner."

The Board found that the Appellant did not provide evidence that water licencing personnel had acted in a biased or unfair manner. It also noted that the licencing authority had completed a Water Allocation Plan for the affected watershed and had concluded that there were insufficient flows to support the issuance of new licences. The Board found that there was not sufficient evidence to rebut the findings in the Water Allocation Plan. The Board also noted that the Appellant had been using less water than his existing licences permitted him to use; that multi-year storage would pose a radical departure from provincial water policy and practice for irrigation; and that the Board could not order the Regional Manager to undertake the policy development and significant expenditures that . . . would be involved to consider multi-year storage. The Board further found that the Appellant had not presented sufficient evidence to justify the requested change in priority dates.

The appeals were dismissed.

2003-WAT-018(a) Watutco Enterprises Ltd. and Pacific Playground Holdings Ltd. v. Deputy Water Comptroller

Decision Date: March 4, 2005

Panel: Alan Andison

Watutco Enterprises Ltd. and Pacific Playground Holdings Ltd. filed a joint appeal against the Deputy Comptroller's decision, refusing to apportion rights between Watutco and Pacific Playground under a conditional water licence that was issued solely to Watutco. The Deputy Comptroller applied to have the appeal dismissed on the grounds that the Board does not have jurisdiction to grant an apportioned licence because the legal principle of estoppel prevents the Appellants from pursuing the remedy that they were seeking. Specifically, he argued that the Appellants were estopped from appealing the apportionment decision because of their prior statements or conduct regarding a previous application to have the same licence reinstated. The Deputy Comptroller also challenged Pacific Playground's standing to appeal the decision.

The Board found that its governing legislation provides it with the power to determine questions of law, including questions of estoppel in the context of the *Water Act*. However, it found on the facts that Watutco and Pacific Playground were not estopped from making the application for apportionment.

The Board also found that Pacific Playground had standing to appeal as a person who was subject to the order of the Deputy Comptroller.

The applications to dismiss the appeal on the basis of estoppel and on the basis of lack of standing were dismissed.

2004-WAT-008(a) Don Harvey v. Assistant Regional Water Manager (Donna May Kennedy, Garry Schmitt, Joseph and Jessica Klein, Third Parties)

Decision Date: November 19, 2004

Panel: Don Cummings

Don Harvey appealed the Regional Manager's refusal to issue him a water licence to conserve water in an unnamed pond. The Appellant sought the licence in order to preserve the pond for wildlife, and to prevent further licensed or unlicensed use of water from the pond.

The Board found that because the Appellant did not seek to construct works, use or divert water, there was no requirement for a licence under the *Water Act*. In addition, there was no basis to issue a licence for "conservation purposes." Further, the Board noted that there was insufficient water in the watershed to support further licensing, and that sections 41(1)(s) and 41(1)(o) of the *Water Act* prohibit the unlawful removal of water from the pond.

The appeal was dismissed.

2004-WAT-010(a) Thomas and Carolyn Baird v. Assistant Regional Water Manager (David and Karen Peterson, Edward and Donna Salle, Winbury Mortgage Corp. and Upton Capital Corp., Third Parties)

Decision Date: August 19, 2004

Panel: Alan Andison

Thomas and Carolyn Baird appealed the Regional Manager's decision to reappoint a water bailiff. The Appellants also opposed the terms of the reappointment order because there were no current engineer's directions nor a defined term of appointment.

The Board found that the reappointment was reasonable and that the person reappointed was a reasonable choice in the circumstances. The Board further found that the 2002 engineer's directions to the water bailiff had not expired, and that new directions were not required as part of the reappointment unless the engineer believes that circumstances require their revision.

The appeal was dismissed.

2004-WAT-012(a) Irene Hildebrandt v. Assistant Regional Water Manger

Decision Date: March 18, 2005

Panel: Don Cummings

Irene Hildebrandt appealed an order of the Regional Manager, directing her to remove an unauthorized retaining wall from the foreshore of Okanagan Lake, and to restore the foreshore to its original condition.

Construction of the wall took place below the lake's natural boundary, and was in a "stream" as defined in the *Water Act*. Accordingly, the Board found that the Appellant lacked the required licence to construct the wall, which must be obtained prior to making changes in and about a stream. While the Board agreed that the wall, by itself, would have a minimal impact on the riparian environment, the Board found that the sum of numerous small intrusions could aggregate into a significant negative impact. Therefore, the Board found that it was reasonable for the Regional Manager, in exercising his authority under the *Water Act*, to order removal of the wall and restoration of the foreshore. The order was confirmed.

The appeal was dismissed.

Wildlife Act

2003-WIL-003(a) Brian Charlton v. Regional Manager

Decision Date: April 27, 2004

Panel: Alan Andison

Brian Charlton appealed the Regional Manager's decision to deny his application to have a large area, adjacent to his Kootenay region guide territory, assigned to him as a fractional guide area.

The Appellant submitted that the Regional Manager engaged in speculation and made assumptions about the interests of aboriginal people and resident hunters, and that the Regional Manager failed to consider the large populations of a number of wildlife species in the area, and the potential economic and conservation benefits that would result from creating a fractional guide area.

The Board found that the Appellant did not present sufficient evidence to justify having the Regional Manager assign him a fractional guide area. The Board found that the Regional Manager did not act on speculation or assumptions about local interests and acted in accordance with his duty to consider local First Nation's and resident hunter's interests when considering the Appellant's application. The Board further found that the Regional Manager considered and balanced the issues of local animal populations, potential conflicts between resident and non-resident hunters and the potential economic benefit of creating a fractional guide area when he denied the application.

The appeal was dismissed.

2003-WIL-004(a) Robert Fontana v. Regional Manager

Decision Date: April 27, 2004

Panel: Alan Andison

Robert Fontana appealed the decision of the Regional Manager to issue him a quota of four bull moose for 2003 and a three-year allocation of six bull moose. He sought to increase his three-year allocation to nine bull moose.

On the evidence presented, the Board found that an increase in quota and allocation for this Management Unit would be detrimental to the moose population. The Board also found that the distribution of allocation and quota requested by the Appellant would result in a number of other guide outfitters having their allocations reduced to zero, which would be harmful to the guiding industry as a whole.

The appeal was dismissed.

2003-WIL-004(b), 2003-WIL-007(a), 2003-WIL-009(a) 2003-WIL-011(a), 2003-WIL-012(a), 2003-WIL-013(a) 2003-WIL-016(a) Robert Fontana, Marcel Gregori, Harry Leuenberger, Marty Lightburn, Steven Leuenberger, Astrid Faiers, Donald Wolfenden v. Regional Manager

Decision Date: April 27, 2004

Panel: Alan Andison

The Appellants filed separate appeals against the three-year allocations for mountain goats issued by the Regional Manager. All of the Appellants sought either an increase in their allocation or sought to have their allocation restored to a previous level.

The Board found that, with the exception of Mr. Fontana and Mr. Wolfenden, the Appellants did not provide sufficient evidence to justify an increase in their allocations. The Board found that the Ministry biologist was sufficiently experienced

to conduct the scientific work associated with setting the allocations, and that the Regional Manager acted reasonably in relying on this work. The Board further found that, with the exception of the population estimates for Mr. Fontana's and Mr. Wolfenden's guiding territories, the information used by the Regional Manager was the best available at the time and provided a reasonable basis for his allocation decisions.

With regard to Mr. Fontana and Mr. Wolfenden, the Board found that the Ministry's estimates of the mountain goat population in their guide areas were not based on the best available data. In these cases, the Board found that Mr. Fontana and Mr. Wolfenden's observations of the number of goats in their territories were credible and more accurate than the Ministry's estimates. The Board found that the evidence presented by Mr. Fontana and Mr. Wolfenden justified a restoration of their three-year allocations to the prior levels.

The Board accepted the Ministry's evidence of a general decline in the region's mountain goat population since 1994. The Board found it was reasonable for the Regional Manager not to apply the transfer policy in those circumstances, and further found that application of the policy without considering regional population trends may be contrary to the Ministry's objective of conserving the mountain goat population and managing the resource for the benefit of guide outfitters and other stakeholders.

The Board allowed the appeals of Mr. Fontana and Mr. Wolfenden.

The appeals of Messrs. Gregori, Leuenberger, Lightburn, Leuenberger, and of Ms. Faers were dismissed.

2003-WIL-006(a) Mike Christensen v. Regional Manager; and

2003-WIL-008(a) Brian Charlton v. Regional Manager; and

2003-WIL-015(a) Albert Cooper v. Regional Manager; and

2003-WIL-023(a) David Beranek v. Regional Manager

Decision Dates: April 27, 2004

Panel: Alan Andison

In four separate appeals and four separate decisions, the Board considered the mountain goat quotas and three-year allocations issued by the Regional Manager to these Appellants. All of the Appellants sought to increase their three-year allocations.

The Board found that the Appellants provided insufficient evidence to justify an increase in their allocations.

The Board accepted the Ministry's evidence of a decline in the region's mountain goat population and found that the population estimates used by the Regional Manager were based on the best available information and provide a reasonable basis to calculate the Appellants' quotas and allocations. The Board further found that it was reasonable for the Regional Manager not to apply the transfer policy and that, application of the policy without considering regional population trends, may be contrary to the Ministry's objective of conserving the mountain goat population and managing the resource for the benefit of guide outfitters and other stakeholders.

The appeals were dismissed.

2003-WIL-025(a) Robert Milligan v. Regional Manager

Decision Date: April 27, 2004

Panel: Lorraine Shore

Robert Milligan appealed the decision of the Regional Manager to allocate him a quota of eight antlered moose in two separate areas of his guide territory in the Skeena region. The Appellant sought to substantially increase his moose quota.

The Board held that the Appellant produced no evidence to demonstrate that the Ministry's calculations of the number of moose available for harvest were incorrect, or that the allocation of moose among user groups should be varied.

The appeal was dismissed.

2004-WIL-016(a) Robert Micatovich v. Deputy Directory of Wildlife

Decision Date: November 19, 2004

Panel: Robert Wickett

Robert Micatovich appealed a decision of the Deputy Director to cancel his hunting licence and to declare him ineligible to hunt or obtain a hunting licence for two years. The decision was based on a finding that the Appellant had exceeded his bag limit for mule deer and attempted to mislead Conservation Officers by telling them that another person had shot the deer.

The Appellant appealed on the grounds that the penalties imposed by the Deputy Director amounted to "double jeopardy," because he had already been convicted in Provincial Court of three offences arising from the incident, and had been sentenced to a one-year period of ineligibility.

The Board found that the Appellant's behavior required both specific and general deterrence, and the punishment imposed by the Deputy Director was appropriate. On the issue of double jeopardy, the Board held that the administrative penalty was imposed to ensure the proper management and conservation of wildlife, rather than as a punishment for the commission of an offence. The Board found that the processes for determining judicial and administrative penalties are separate and there is no double jeopardy.

The Board also considered the delay in imposing the licence cancellation and period of ineligibility. It found that there was no prejudice resulting from the delay, and that the Appellant's right to natural justice had not been breached.

The appeal was dismissed.

2004-WIL-017(a) Alan Adcock v. Regional Environmental Stewardship Manager

Decision Date: August 20, 2004

Panel: Alan Andison

Alan Adcock appealed a decision of the Regional Manager who refused to issue a permit for the possession of the carcass of a mature bald eagle that Mr. Adcock had found on a highway.

On a review of the legislation, the Board found that a Regional Manager may issue a permit allowing a person to possess wildlife for educational, scientific, ceremonial or societal purposes, or a permit transferring the right of property in dead wildlife from the government to a person. However, under the *Permit Regulation*, the Regional Manager must not issue a permit transferring the right of property in an eagle (or an eagle carcass), except to an educational institution or scientific organization.

The Appellant's application was not for an education institution or scientific organization, and his purpose for possessing the eagle was personal. Therefore, the Regional Manager, and the Board, had no jurisdiction to issue a permit for personal possession of an eagle carcass.

The appeal was dismissed.

2004-WIL-026(a) Anthony Richardson v. Deputy Directory of Wildlife

Decision Date: October 15, 2004

Panel: Robert Wickett

Anthony Richardson appealed the Deputy Director's decision to cancel his hunting licence and declare him ineligible to hold a licence for a period of one year. Mr. Richardson mistakenly killed a grizzly bear in a closed area while hunting with a black bear licence.

The Board agreed with the Deputy Director that the Appellant did not exercise appropriate care in identifying his kill. It found that a licence cancellation was appropriate, and that the one-year period was not excessive.

The Board also considered whether it was unfair to impose the period of ineligibility, given that the Deputy Director's decision was issued almost four years after the Appellant was convicted of hunting wildlife not within the open season. The Board found that the delay in issuing the Deputy Director's decision was excessive and unreasonable. However, there was no evidence that the delay had seriously prejudiced the Appellant. Therefore, the Board found that the delay did not breach the principles of natural justice.

The appeal was dismissed.

2004-WIL-028(a), 030(a), 032(a), 033(a), 034(a) Darwin Cary, Dale Drinkall, Frank Simpson, Arthur Thompson, and David Weins v. Regional Wildlife Manager (B.C. Wildlife Federation, Participant)

Decision Date: August 16, 2004

Panel: Alan Andison

The Appellants separately appealed the decisions of the Regional Manager to reduce their stone sheep quotas for 2004. The hearing was to take place in Fort St. John. The Appellants applied to have the appeal hearing held in Victoria.

The Board noted that its general policy is to convene a hearing in the location closest to where the subject matter of the appeal arises; in this case, Fort St. John. The Board also considered the interests of the local public as well as the interests of the public in the rest of the province. It concluded that the most appropriate location for the hearing was Fort St. John.

The application for a hearing venue change was denied.

2004-WIL-035(a) Tom Kyriakos v. Deputy Directory of Wildlife

Decision Date: October 19, 2004

Panel: Alan Andison

Tom Kyriakos appealed a decision of the Deputy Director to cancel his angling licence and declare him ineligible to hold a licence for a period of two years. The decision was based on a finding that the Appellant had been ice-fishing with more than one line in a lake contrary to the *British Columbia Sport Fishing Regulations*, a regulation under the federal *Fisheries Act*.

The Board agreed with the Deputy Director that a cancellation was both appropriate and warranted. However, the Board found that the period of ineligibility was excessive, and reduced it to one year.

The appeal was allowed, in part.

2004-WIL-036(a) Archie Gairdner v. Regional Manager Environmental Stewardship (Judy Duchesne, Third Party)

Decision Date: December 2, 2004

Panel: Lorraine Shore

Archie Gairdner appealed a decision of the Regional Manager to rescind a relinquishment of Trapline 749T011, which resulted in the trapline being re-registered to both Mr. Gairdner and Judy Duchesne. Mr. Gairdner sought an order reversing

the Regional Manager's decision, and re-registering the trapline in his name alone.

The Board found that the relinquishment form was short and unambiguous. The Board concluded that it was not likely that anyone reading it would have been mislead as to its purpose. The Board confirmed the relinquishment and the re-registration.

The appeal was dismissed.

2004-WIL-038(a) Ronald Traverse v. Deputy Director of Wildlife

Decision Date: January 31, 2005

Panel: Lynne Huestis

Ronald Traverse appealed a decision of the Deputy Director cancelling his angling licence and prohibiting him from obtaining an angling licence for a five year period. Mr. Traverse asked that the Board shorten the prohibition period to four years.

The Board found that the length of the prohibition imposed on the Appellant was not comparable to the four-year prohibition imposed on another individual who was involved in the same illegal fishing incident that led to the Deputy Director's decision. The Board found that there was no evidence to explain the difference in the length of the prohibitions, and that it was unclear as to why age was not considered in the Appellant's case, but was considered in the case of the other individual. The Board determined that a greater deterrence was not required in the case of the Appellant, and that the length of the prohibition imposed on him should be reduced to four years.

The appeal was allowed.

2004-WIL-043(a) C. Edward Harder v. Regional Wildlife Manager Environmental Stewardship

Decision Date: January 20, 2005

Panel: Alan Andison

C. Edward Harder appealed the Regional Manager's decision to refuse a permit for the possession of a great gray owl carcass, valued in excess of $200. Mr. Harder asked that the decision be set aside, and that he be issued a permit to possess the owl or a permit granting a right of property in the owl.

The Board held that the Appellant did not qualify for a possession permit under the *Permit Regulation*.

The appeal was dismissed.

2004-WIL-044(a) Matthew Ryan Willox v. Regional Manager

Decision Date: January 26, 2005

Panel: Alan Andison

Matthew Ryan Willox appealed the Regional Manager's decision to refuse a permit for the possession of a bald eagle carcass.

The Board held that the Appellant did not qualify for a possession permit under the *Permit Regulation*.

The appeal was dismissed.

Summaries of Court Decisions Related to the Board

North Fraser Harbour Commission and General Chemical Canada Ltd. v. Attorney General of British Columbia, Canadian Pacific Railway, Deputy Director of Waste Management and British Columbia Hydro and Power Authority (Friends of the Earth, Georgia Strait Alliance, T. Buck Suzuki Environmental Foundation and West Coast Environmental Law Association, Interveners)

Decision Date: January 20, 2005

Court: S.C.C., McLachlin C.J., Major, Bastarache, Binnie, LeBel, Deschamps, Fish, Abella and Charron, JJ.

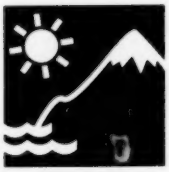
Cite: 2005 SCC 1

This was an appeal from a judgment of the British Columbia Court of Appeal (2003 BCCA 436). The majority decision of the Court of Appeal reversed the judgment of the British Columbia Supreme Court (2000 BCSC 638), which had upheld the decision of the Environmental Appeal Board ([1999] B.C.E.A. No. 57 (QL)). The Board had found that the British Columbia Hydro and Power Authority ("BC Hydro") could be named to a remediation order requiring the clean up of a site which had been contaminated by BC Electric, a predecessor company. The Supreme Court of Canada allowed the appeal, effectively upholding the original decision of the Board.

As background, BC Hydro was created out of the amalgamation of B.C. Electric and two other companies by way of the Amalgamation Agreement, which was attached as an appendix to, and ratified by, the *Power Measures Act, 1966*, S.B.C. 1966, c. 38. Under the Amalgamation Agreement, BC Hydro was to be liable for the obligations and liability of predecessor corporations "immediately before amalgamation." One of the central issues before the Board and the courts was whether BC Hydro could be made subject to a remediation order under the *Waste Management Act* by reason of B.C. Electric's conduct between 1920-1957, which created a contaminated site. The Act fixes liability for site contamination on "responsible persons", defined to include previous owners of the site and persons who had caused the site to be polluted.

In allowing the appeal, the Supreme Court of Canada adopted the dissenting reasons of Justice Rowles at the Court of Appeal. Rowles J.A. held that, by virtue of the Amalgamation Agreement, BC Hydro became fixed with the liabilities to which B.C. Electric would have been subject to had it not amalgamated with the other entities. She found that the words "immediately before the amalgamation" did not have the effect of

limiting BC Hydro's legal responsibility. Rather, those words simply establish that, from the time of the amalgamation, the new amalgamated enterprise replaces its predecessors. She held that the effect of the amalgamation was to continue the three prior entities as one combined entity and, upon amalgamation, BC Hydro assumed the responsibilities of each of the three entities of which it was comprised, including B.C. Electric.



Summaries of Cabinet Decisions Related to the Board

There were no orders by Cabinet during this report period concerning decisions by the Board.

APPENDIX I

Legislation and Regulations

Reproduced below are relevant provisions from each of the statutes governing the Board, and the appeals to the Board, that were in force during the report period.

Environment Management Act

[Repealed by the Environmental Management Act, SBC 2003, c. 53, s. 146, effective July 8, 2004 (B.C. Reg. 317/2004).]

Environmental Appeal Board

11 (1) The Lieutenant Governor in Council must establish an Environmental Appeal Board to hear appeals that under the provisions of any other enactment are to be heard by the board.

(2) In relation to an appeal under another enactment the board has the powers given to it by that other enactment.

(3) The board consists of a chair, one or more vice chairs and other members the Lieutenant Governor in Council appoints.

(4) The Lieutenant Governor in Council may

(a) appoint persons as temporary members to deal with a matter before the board, or for a period or during circumstances the Lieutenant Governor in Council specifies, and

(b) designate a temporary member to act as chair or as a vice chair.

(5) A temporary member has, during the period or under the circumstances or for the purpose for which the person is appointed as a temporary member, all the powers of and may perform all the duties of a member of the board.

(6) The Lieutenant Governor in Council may determine the remuneration and expenses payable to the members of the board.

(7) The chair may organize the board into panels, each comprised of one or more members.

(8) The members of the board are to sit

(a) as a board, or

(b) as a panel of the board.

(9) If members sit as a panel,

(a) 2 or more panels may sit at the same time,

(b) the panel has all the jurisdiction of and may exercise and perform the powers and duties of the board, and

(c) an order, decision or action of the panel is an order, decision or action of the board.

(10) The number of members that constitute a quorum of the board or a panel may be set by regulation of the Lieutenant Governor in Council.

(11) The board, a panel and each member have all the powers, protection and privileges of a commissioner under sections 12, 15 and 16 of the *Inquiry Act*.

(12) In an appeal, the board or a panel

(a) may hear any person, including a person the board or a panel invites to appear before it, and

(b) on request of

(i) the person,

(ii) a member of the body, or

(iii) a representative of the person or body,

whose decision is the subject of the appeal or review, must give that person or body full party status.

(13) A person or body that is given full party status under subsection (12) may

(a) be represented by counsel,

(b) present evidence,

(c) where there is an oral hearing, ask questions, and

(d) make submissions as to facts, law and jurisdiction.

(14) A person who gives oral evidence may be questioned by the board, a panel or the parties to the appeal.

(14.1) The appeal board may require the appellant to deposit with it an amount of money it considers sufficient to cover all or part of the anticipated costs of the respondent and the anticipated expenses of the appeal board in connection with the appeal.

(14.2) In addition to the powers referred to in subsection (2) but subject to the regulations, the appeal board may make orders for payment as follows:

(a) requiring a party to pay all or part of the costs of another party in connection with the appeal, as determined by the appeal board;

(b) if the appeal board considers that the conduct of a party has been vexatious, frivolous or abusive, requiring the party to pay all or part of the expenses of the appeal board in connection with the appeal.

(14.3) An order under subsection (14.2) may include directions respecting the disposition of money deposited under subsection (14.1).

(14.4) If a person or body given full party status under subsection (12) is an agent or representative of the government,

(a) an order under subsection (14.2) must not be made for or against the person or body, and

(b) an order under subsection (14.2)(a) may instead be made for or against the government.

(14.5) The costs required to be paid by the government under an order under subsection (14.4)(b) must be paid out of the consolidated revenue fund.

(15) If the board or a panel makes an order or decision with respect to an appeal the chair must send a copy of the order or decision to the minister and to the parties.

Varying and rescinding orders of board

12 The Lieutenant Governor in Council may, in the public interest, vary or rescind an order or decision of the board.

Environmental Management Act,

SBC 2003, c. 53

[In force on July 8, 2004]

Part 8 — Appeals

Division 1 — Environmental Appeal Board

Environmental Appeal Board

93 (1) The Environmental Appeal Board is continued to hear appeals that under the provisions of any enactment are to be heard by the appeal board.

(2) In relation to an appeal under another enactment, the appeal board has the powers given to it by that other enactment.

(3) The appeal board consists of the following individuals appointed by the Lieutenant Governor in Council after a merit based process:

(a) a member designated as the chair;

(b) one or more members designated as vice chairs after consultation with the chair;

(c) other members appointed after consultation with the chair.

(4) The Administrative Tribunals Appointment and Administration Act applies to the appeal board.

(5 and 6) Repealed 2003-47-24.]

(7) The chair may organize the appeal board into panels, each comprised of one or more members.

(8) The members of the appeal board may sit

(a) as the appeal board, or

(b) as a panel of the appeal board.

(9) If members sit as a panel of the appeal board,

(a) 2 or more panels may sit at the same time,

(b) the panel has all the jurisdiction of and may exercise and perform the powers and duties of the appeal board, and

(c) an order, decision or action of the panel is an order, decision or action of the appeal board.

(10) The Lieutenant Governor in Council, by regulation, may establish the quorum of the appeal board or a panel.

(11) The appeal board, a panel and each member have all the powers, protection and privileges of a commissioner under sections 12, 15 and 16 of the *Inquiry Act*.

Parties and witnesses

94 (1) In an appeal, the appeal board or panel

(a) may hear the evidence of any person, including a person the appeal board or a panel invites to appear before it, and

(b) on request of

(i) the person,

(ii) a member of the body, or

(iii) a representative of the person or body,

whose decision is the subject of the appeal or review, must give that person or body full party status.

(2) A person or body, including the appellant, that has full party status in an appeal may

(a) be represented by counsel,

(b) present evidence,

(c) if there is an oral hearing, ask questions, and

(d) make submissions as to facts, law and jurisdiction.

(3) A person who gives oral evidence may be questioned by the appeal board, a panel or the parties to the appeal.

Costs and security for costs

95 (1) The appeal board may require the appellant to deposit with it an amount of money it considers sufficient to cover all or part of the anticipated costs of the respondent and the anticipated expenses of the appeal board in connection with the appeal.

(2) In addition to the powers referred to in section 93 (2) [environmental appeal board] but subject to the regulations, the appeal board may make orders as follows:

(a) requiring a party to pay all or part of the costs of another party in connection with the appeal, as determined by the appeal board;

(b) if the appeal board considers that the conduct of a party has been vexatious, frivolous or abusive, requiring the party to pay all or part of the expenses of the appeal board in connection with the appeal.

(3) An order under subsection (2) may include directions respecting the disposition of money deposited under subsection (1).

(4) If a person or body given full party status under subsection 94 (2) [parties and witnesses] is an agent or representative of the government,

(a) an order under subsection (2) may not be made for or against the person or body, and

(b) an order under subsection (2) (a) may be made for or against the government.

(5) The costs payable by the government under an order under subsection (4) (b) must be paid out of the consolidated revenue fund.

Decision of appeal board

96 If the appeal board or a panel makes an order or decision with respect to an appeal the chair must send a copy of the order or decision to the minister and to the parties.

Varying and rescinding orders of appeal board

97 The Lieutenant Governor in Council may, in the public interest, vary or rescind an order or decision of the appeal board.

Appeal board power to enter property

98 The members of the appeal board have, for the purposes of an appeal, the right to enter any property except a private residence.

Division 2 — Appeals from Decisions under this Act

Definition of "decision"

99 For the purpose of this Division, "decision" means

(a) making an order,

(b) imposing a requirement,

(c) exercising a power except a power of delegation,

(d) issuing, amending, renewing, suspending, refusing or cancelling a permit, approval or operational certificate,

(e) including a requirement or a condition in an order, permit, approval or operational certificate,

(f) determining to impose an administrative penalty, and

(g) determining that the terms and conditions of an agreement under section 115 (4) [*administrative penalties*] have not been performed.

Appeals to Environmental Appeal Board

100 (1) A person aggrieved by a decision of a director or a district director may appeal the decision to the appeal board in accordance with this Division.

(2) For certainty, a decision under this Act of the Lieutenant Governor in Council or the minister is not appealable to the appeal board.

Time limit for commencing appeal

101 The time limit for commencing an appeal of a decision is 30 days after notice of the decision is given.

Procedure on appeals

102 (1) An appeal under this Division

(a) must be commenced by notice of appeal in accordance with the prescribed practice, procedure and forms, and

(b) must be conducted in accordance with Division 1 of this Part and the regulations.

(2) The appeal board may conduct an appeal under this Division by way of a new hearing.

Powers of appeal board in deciding appeal

103 On an appeal under this Division, the appeal board may

(a) send the matter back to the person who made the decision, with directions,

(b) confirm, reverse or vary the decision being appealed, or

(c) make any decision that the person whose decision is appealed could have made, and that the appeal board considers appropriate in the circumstances.

Appeal does not operate as stay

104 The commencement of an appeal under this Division does not operate as a stay or suspend the operation of the decision being appealed unless the appeal board orders otherwise.

Division 3 — Regulations in Relation to Appeal Board

Regulations in relation to the appeal board

105 (1) Without limiting section 138 (1) [general authority to make regulations], the Lieutenant Governor in Council may make regulations as follows:

(a) prescribing a tariff of fees to be paid with respect to a matter within the jurisdiction of the appeal board;

(b) prescribing practices, procedures and forms to be followed and used by the appeal board;

(c) establishing restrictions on the authority of the board under section 95 (1) to (4) [costs and security for costs] including, without limiting this,

(i) prescribing limits, rates and tariffs relating to amounts that may be required to be paid or deposited, and

(ii) prescribing what are to be considered costs to the government in relation to an appeal and how those are to be determined;

(d) respecting how notice of a decision under section 96 [decision of appeal board] may be given.

Environmental Appeal Board Procedure Regulation

[as amended when the *Environmental Management* Act came into force on July 8, 2004]

Interpretation

1 In this regulation

"Act" means the *Environmental Management Act*;

"board" means the Environmental Appeal Board established under the Act;

"chairman" means the chairman of the board;

"minister" means the minister responsible for administering the Act under which the appeal arises;

"objector" in relation to an appeal to the board means a person who, under an express provision in another enactment, had the status of an objector in the matter from which the appeal is taken.

Application

2 This regulation applies to all appeals to the board.

Appeal practice and procedure

3 (1) Every appeal to the board shall be taken within the time allowed by the enactment that authorizes the appeal.

(2) Unless otherwise directed under the enactment that authorizes the appeal, an appellant shall give notice of the appeal by mailing a notice of appeal by registered mail to the chairman, or leaving it for him during business hours, at the address of the board.

(3) A notice of appeal shall contain the name and address of the appellant, the name of counsel or agent, if any, for the appellant, the address for service upon the appellant, grounds for appeal, particulars relative to the appeal and a statement of the nature of the order requested.

(4) The notice of appeal shall be signed by the appellant, or on his behalf by his counsel or agent, for each action, decision or order appealed against and the notice shall be accompanied by a fee of $25, payable to the Minister of Finance and Corporate Relations.

(5) Where a notice of appeal does not conform to subsections (3) and (4), the chairman may by mail or another method of delivery return the notice of appeal to

the appellant together with written notice

(a) stating the deficiencies and requiring them to be corrected, and

(b) informing the appellant that under this section the board shall not be obliged to proceed with the appeal until a notice or amended notice of appeal, with the deficiencies corrected, is submitted to the chairman.

(6) Where a notice of appeal is returned under subsection (5) the board shall not be obliged to proceed with the appeal until the chairman receives an amended notice of appeal with the deficiencies corrected.

Procedure following receipt of notice of appeal

4 (1) On receipt of a notice of appeal, or, in a case where a notice of appeal is returned under section 3(5), on receipt of an amended notice of appeal with the deficiencies corrected, the chairman shall immediately acknowledge receipt by mailing or otherwise delivering an acknowledgement of receipt together with a copy of the notice of appeal or of the amended notice of appeal, as the case may be, to the appellant, the minister's office, the official from whose decision the appeal is taken, the applicant, if he is a person other than the appellant, and any objectors.

(2) The chairman shall within 60 days of receipt of the notice of appeal or of the amended notice of appeal, as the case may be, determine whether the appeal is to be decided by members of the board sitting as a board or by members of the board sitting as a panel of the board and the chairman shall determine whether the board or the panel, as the case may be, will decide the appeal on the basis of a full hearing or from written submissions.

(3) Where the chairman determines that the appeal is to be decided by a panel of the board, he shall, within the time limited in subsection (2), designate the panel members and,

(a) if he is on the panel, he shall be its chairman,

(b) if he is not on the panel but a vice chairman of the board is, the vice chairman shall be its chairman, or

(c) if neither the chairman nor a vice chairman of the board is on the panel, the chairman shall designate one of the panel members to be the panel chairman.

(4) Within the time limited in subsection (2) the chairman shall, where he has determined that a full hearing shall be held, set the date, time and location of the hearing of the appeal and he shall notify the appellant, the minister's office, the Minister of Health if the appeal relates to a matter under the *Health Act*, the official from whose decision the appeal is taken, the applicant, if he is a person other than the appellant, and any objectors.

(5) Repealed. [B.C. Reg. 118/87, s.2.]

Quorum

5 (1) Where the members of the board sit as a board, 3 members, one of whom must be the chairman or vice chairman, constitute a quorum.

(2) Where members of the board sit as a panel of one, 3 or 5 members, then the panel chairman constitutes a quorum for the panel of one, the panel chairman plus one other member constitutes the quorum for a panel of 3 and the panel chairman plus 2 other members constitutes the quorum for a panel of 5.

Order or decision of the board or a panel

6 Where the board or a panel makes an order or decision with respect to an appeal, written reasons shall be given for the order or decision and the chairman shall, as soon as practical, send a copy of the order or decision accompanied by the written reasons to the minister and the parties.

Written briefs

7 Where the chairman has decided that a full hearing shall be held, the chairman in an appeal before the board, or the panel chairman in an appeal before a panel, may require the parties to submit written briefs in addition to giving oral evidence.

Public hearings

8 Hearings before the board or a panel of the board shall be open to the public.

Recording the proceedings

9 (1) Where a full hearing is held, the proceedings before the board or a panel of the board shall be taken using shorthand or a recorder, by a stenographer appointed by the chairman, for a hearing before the board, or by the panel chairman, for a hearing before the panel.

(2) Before acting, a stenographer who takes the proceedings before the board or a panel shall make oath that he shall truly and faithfully report the evidence.

(3) Where proceedings are taken as provided in this section by a stenographer so sworn, then it is not necessary that the evidence be read over to, or be signed by, the witness, but it is sufficient that the transcript of the proceedings be

(a) signed by the chairman or a member of the board, in the case of a hearing before the board, or by the panel chairman or a member of the panel, in the case of a hearing before the panel, and

(b) be accompanied by an affidavit of the stenographer that the transcript is a true report of the evidence.

Transcripts

10 On application to the chairman or panel chairman, as the case may be, a transcript of the proceedings, if any, before the board or the panel of the board shall be prepared at the cost of the person requesting it or, where there is more than one applicant for the transcript, by all of the applicants on a pro rata basis.

Representation before the board

11 Parties appearing before the board or a panel of the board may represent themselves personally or be represented by counsel or agent.

Health Act

Power to make regulations

8 (2) In addition to the matters set out in subsection (1), the Lieutenant Governor in Council may make regulations with respect to the following matters:

...

(m) the inspection, regulation and control, for the purposes of health protection provided in this Act, of

...

(n) the location, design, installation, construction, operation and maintenance of

...

(C) sewage disposal systems,

...

and requiring a permit for them and requiring compliance with the conditions of the permit and authorizing inspections for that purpose;

...

(4) If a person is aggrieved by the issue or the refusal of a permit for a sewage disposal system under a regulation made under subsection (2)(m), the person may appeal that ruling to the Environmental Appeal Board established under section 11 of the Environment Management Act within 30 days of the ruling.

(5) On hearing an appeal under subsection (4), the Environmental Appeal Board may confirm, vary or rescind the ruling under appeal.

Integrated Pest Management Act,

SBC 2003, c. 58 [In force on December 31, 2004]

Appeals to Environmental Appeal Board

14 (1) For the purposes of this section, "decision" means any of the following:

(a) making an order, other than an order under section 8 [minister's orders];

(b) specifying terms and conditions, except terms and conditions prescribed by the administrator, in a licence, certificate or permit;

(c) amending or refusing to issue, amend or renew a licence, certificate or permit;

(d) revoking or suspending a licence, certificate, permit or confirmation;

(e) restricting the eligibility of a holder of a licence, certificate, permit or pest management plan to apply for another licence, certificate or permit or to receive confirmation;

(f) determining to impose an administrative penalty;

(g) determining that the terms and conditions of an agreement under section 23 (4) [administrative penalties] have not been performed.

(2) A declaration, suspension or restriction under section 2 [Act may be limited in emergency] is not subject to appeal under this section.

(3) A person may appeal a decision under this Act to the appeal board.

(4) The time limit for commencing an appeal of a decision is 30 days after the date the decision being appealed is made.

(5) On appeal must be commenced by notice of appeal in accordance with the practice, procedure and forms prescribed by regulation under the Environmental Management Act.

(6) Subject to this Act, an appeal must be conducted in accordance with Division 1 [Environmental Appeal Board] of Part 8 of the Environmental Management Act and the regulations under that Part.

(7) The appeal board may conduct an appeal by way of a new hearing.

(8) On an appeal, the appeal board may

(a) send the matter back to the person who made the decision being appealed, with directions,

(b) confirm, reverse or vary the decision being appealed, or

(c) make any decision that the person whose decision is appealed could have made, and that the board considers appropriate in the circumstances.

(9) An appeal does not act as a stay or suspend the operation of the decision being appealed unless the appeal board orders otherwise.

Pesticide Control Act

[Repealed by the Integrated Pest Management Act, SBC 2003, c. 58, s. 45, effective December 31, 2004 (B.C. Reg. 599/2004).]

Appeals to Environmental Appeal Board

15 (1) For the purpose of this section, **"decision"** means an action, decision or order.

(2) Any person may appeal a decision of the administrator under this Act, or of any other person under this Act, to the appeal board.

(3) The time limit for commencing an appeal is the time limit prescribed by regulation.

(4) An appeal under this section

(a) must be commenced by notice of appeal in accordance with the practice, procedure and forms prescribed by regulation under the *Environment Management Act*, and

(b) subject to this Act, must be conducted in accordance with the *Environment Management Act* and the regulations under that Act.

(5) For the purposes of an appeal under this section, if a notice under this Act is sent by registered mail to the last known address of a person, the notice is conclusively deemed to be served on the person to whom it is addressed on

(a) the 14th day after the notice was deposited with Canada Post, or

(b) the date on which the notice was actually received by the person, whether by mail or otherwise.

whichever is earlier.

(6) The appeal board may conduct an appeal by way of a new hearing.

(7) On an appeal, the appeal board may

(a) send the matter back to the person who made the decision being appealed, with directions,

(b) confirm, reverse or vary the decision being appealed, or

(c) make any decision that the person whose decision is appealed could have made, and that the board considers appropriate in the circumstances.

(8) An appeal does not act as a stay or suspend the operation of the decision being appealed unless the appeal board orders otherwise.

Pesticide Control Act Regulation

[Repealed effective December 31, 2004]

Appeals

45 (1) A person who intends to appeal to the board against the action, decision or order of the administrator or of any other person under the Act shall file the appeal in the manner required by subsection (2) within 30 days from the date of the action, decision or order against which the appeal is taken.

(2) The appellant shall file the appeal by mailing notice of appeal by registered mail to the chairman, or leaving it for him during business hours, at the address of the board.

(3) A notice of appeal shall contain the name and address of the appellant, the name of counsel or agent, if any, for the appellant, the address for service upon the appellant, grounds for appeal, particulars relative to the appeal and a statement of the nature of the order requested, and shall be signed by the appellant or on his behalf by his counsel or agent.

(4) Where a notice of appeal does not conform to subsection (3), the chairman may by mail or another method of delivery return the notice of appeal to the appellant together with written notice

(a) stating the deficiencies and requiring them to be corrected, and

(b) informing the appellant that under this section the board shall not be obliged to proceed with the appeal until a notice or amended notice of appeal, with the deficiencies corrected, is submitted to the chairman.

(5) Where a notice of appeal is returned under subsection (4) the board shall not be obliged to proceed with the appeal until the chairman receives an amended notice of appeal with the deficiencies corrected.

(6) **Repealed.** [B.C. Reg. 132/82.]

(7) The procedures on the appeal shall be those set out in the Environmental Appeal Board Procedure Regulation.

Waste Management Act

[Repealed by the Environmental Management Act, 2003, SBC 2003, c. 53, s. 174, effective July 8, 2004 (B.C. Reg. 317/2004).]

Definition of "decision"

43 For the purpose of this Part, **"decision"** means

(a) the making of an order,

(b) the imposition of a requirement,

(c) an exercise of a power,

(d) the issue, amendment, renewal, suspension, refusal or cancellation of a permit, approval or operational certificate, and

(e) the inclusion in any order, permit, approval or operational certificate of any requirement or condition.

Appeals to Environmental Appeal Board

44 (1) Subject to this Part, a person aggrieved by a decision of a manager, director or district director may appeal the decision to the appeal board.

(2) Nothing in this section is to be construed as applying in respect of a decision made by the minister under this Act or by the Lieutenant Governor in Council.

Time limit for commencing appeal

45 The time limit for commencing an appeal is 30 days after notice of the decision being appealed is given

(a) to the person subject to the decision, or

(b) in accordance with the regulations.

Procedure on appeals

46 (1) An appeal under this Part

(a) must be commenced by notice of appeal in accordance with the practice, procedure and forms prescribed by regulation under the *Environment Management Act*, and

(b) subject to this Act, must be conducted in accordance with the *Environment Management Act* and the regulations under that Act.

(2) The appeal board may conduct an appeal by way of a new hearing.

Powers of appeal board in deciding appeal

47 On an appeal, the appeal board may

(a) send the matter back to the person who made the decision, with directions,

(b) confirm, reverse or vary the decision being appealed, or

(c) make any decision that the person whose decision is appealed could have made, and that the board considers appropriate in the circumstances.

Appeal does not operate as stay

48 An appeal taken under this Act does not operate as a stay or suspend the operation of the decision being appealed unless the appeal board orders otherwise.

Water Act

[as amended on November 1, 2004 to address the regulation of ground water]

Appeals to Environmental Appeal Board

92 (1) Subject to subsections (2) and (3), an order of the comptroller, the regional water manager or an engineer may be appealed to the appeal board by

(a) the person who is subject to the order,

(b) an owner whose land is or is likely to be physically affected by the order, or

(c) a licensee, riparian owner or applicant for a licence who considers that their rights are or will be prejudiced by the order.

(1.1) Despite subsection (1), a licensee may not appeal an order of the comptroller or a regional water manager to cancel in whole or in part a licence and all rights under it under section 23 (2) (c) or (d).

(2) An order of the comptroller, the regional water manager or an engineer under Part 5 or 6 in relation to a well, works related to a well, ground water or an aquifer may be appealed to the appeal board by

(a) the person who is subject to the order,

(b) the well owner, or

(c) the owner of the land on which the well is located.

(3) An order of the comptroller, the regional water manager or an engineer under section 81 *[drilling authorizations]* may be appealed to the appeal board by

(a) the person who is subject to the order,

(b) the well owner,

(c) the owner of the land on which the well is located, or

(d) a person in a class prescribed in respect of the water management plan or drinking water protection plan for the applicable area.

(4) The time limit for commencing an appeal is 30 days after notice of the order being appealed is given

(a) to the person subject to the order, or

(b) in accordance with the regulations.

(5) For the purposes of an appeal, if a notice under this Act is sent by registered mail to the last known address of a person, the notice is conclusively deemed to be served on the person to whom it is addressed on

(a) the 14th day after the notice was deposited with Canada Post, or

(b) the date on which the notice was actually received by the person, whether by mail or otherwise,

whichever is earlier.

(6) An appeal under this section

(a) must be commenced by notice of appeal in accordance with the practice, procedure and forms prescribed by regulation under the *Environment Management Act*, and

(b) subject to this Act, must be conducted in accordance with the *Environment Management Act* and the regulations under that Act.

(7) The appeal board may conduct an appeal by way of a new hearing.

(8) On an appeal, the appeal board may

(a) send the matter back to the comptroller, regional water manager or engineer, with directions,

(b) confirm, reverse or vary the order being appealed, or

(c) make any order that the person whose order is appealed could have made and that the board considers appropriate in the circumstances.

(9) An appeal does not act as a stay or suspend the operation of the order being appealed unless the appeal board orders otherwise.

Wildlife Act

Appeals to Environmental Appeal Board

101.1 (1) The affected person referred to in section 101(2) may appeal the decision to the Environmental Appeal Board established under the *Environment Management Act*. [now *Environmental Management Act*].

(2) The time limit for commencing an appeal is 30 days after notice is given

(a) to the affected person under section 101(2), or

(b) in accordance with the regulations.

(3) An appeal under this section

(a) must be commenced by notice of appeal in accordance with the practice, procedure and forms prescribed by regulation under the *Environment Management Act*, [now *Environmental Management Act*] and

(b) subject to this Act, must be conducted in accordance with the *Environment Management Act* [now *Environmental Management Act*] and the regulations under that Act.

(4) The appeal board may conduct an appeal by way of a new hearing.

(5) On an appeal, the appeal board may

(a) send the matter back to the regional manager or director, with directions,

(b) confirm, reverse or vary the decision being appealed, or

(c) make any decision that the person whose decision is appealed could have made, and that the board considers appropriate in the circumstances.

(6) An appeal taken under this Act does not operate as a stay or suspend the operation of the decision being appealed unless the appeal board orders otherwise.

BRITISH COLUMBIA

QP #4500128302